

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

276C0197

HOUSE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **HB1110** - 2/11/99

Introduced by: Representatives Lucas, Crisp, Hanson, Kazmerzak, Kooistra, McIntyre,  
Waltman, and Weber and Senators Dennert and Symens

1 FOR AN ACT ENTITLED, An Act to restrict the locations where video lottery machines may  
2 be placed and to increase sales and use taxes.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 42-7A-1 be amended to read as follows:

5 42-7A-1. Terms used in this chapter mean:

- 6 (1) "Associated equipment," any proprietary device, machine or part used in the  
7 manufacture or maintenance of a video lottery machine, including ~~but not limited to~~  
8 integrated circuit chips, printed wired assembly, printed wired boards, printing  
9 mechanisms, video display monitors, and metering devices;
- 10 (2) "Commission," the South Dakota Lottery Commission;
- 11 (3) "Credit," five, ten, or twenty-five cents;
- 12 (4) "Executive director," the executive director of the South Dakota Lottery;
- 13 (5) "Instant lottery," a game that offers preprinted tickets that indicate immediately or in  
14 a grand prize drawing ~~whether~~ if the player has won a prize;
- 15 (6) "Licensed establishment," a bar or lounge owned or managed by an individual,  
16 partnership, corporation, or association licensed to sell alcoholic beverages for

1 consumption upon the premises where sold, but not a business licensed to sell  
2 alcoholic beverages pursuant to subdivision 35-4-2(12) or (16);

3 (7) "Lottery" or "state lottery," any lottery operated pursuant to this chapter;

4 (8) "Lottery retailer," any person with whom the South Dakota Lottery has contracted  
5 to sell lottery tickets to the public;

6 (9) "Lottery vendor" or "vendor," any person who has entered into a major procurement  
7 contract with the South Dakota Lottery;

8 (10) "Major procurement," any contract with any vendor directly involved in providing  
9 facilities, equipment, tickets, and services unique to the lottery, but not including  
10 materials, supplies, equipment, and services common to the ordinary operations of  
11 state agencies;

12 (11) "Net machine income," money put into a video lottery machine minus credits paid out  
13 in cash;

14 (12) "On-line lottery," a game linked to a central computer via a telecommunications  
15 network in which the player selects a specified group of numbers or symbols out of  
16 a predetermined range of numbers or symbols as approved by the commission;

17 (13) "South Dakota Lottery," the state agency created by this chapter to operate a lottery  
18 pursuant to this chapter;

19 (14) "Ticket," any tangible evidence issued or authorized by the South Dakota Lottery to  
20 prove participation in an instant, on-line, or video lottery game;

21 (14A) "Video lottery," any video game of chance played on video lottery machines;

22 (15) "Video lottery machine distributor," any individual, partnership, corporation, or  
23 association that distributes or sells video lottery machines or associated equipment in  
24 this state;

25 (16) "Video lottery machine manufacturer," any individual, partnership, corporation, or

1 association that assembles or produces video lottery machines or associated  
2 equipment for sale or use in this state;

3 (17) "Video lottery machine operator," any individual, partnership, corporation, or  
4 association that places video lottery machines or associated equipment for public use  
5 in this state; and

6 (18) "Video lottery machines," or "machine," any electronic video game machine that,  
7 upon insertion of cash, is available to play or simulate the play of a video game,  
8 including ~~but not limited to~~ video poker, keno, and blackjack, authorized by the  
9 commission utilizing a video display and microprocessors in which, by chance, the  
10 player may receive free games or credits that can be redeemed for cash. The term  
11 does not include a machine that directly dispenses coins, cash, or tokens.

12 Section 2. That § 42-7A-37.1 be amended to read as follows:

13 42-7A-37.1. A business licensed pursuant to subdivision 35-4-2(12) ~~and or~~ (16) may not be  
14 a licensed establishment for video lottery placement pursuant to subdivision 42-7A-1(6) ~~unless~~  
15 ~~it is a bar or lounge. For the purposes of this section, a bar or lounge is an enterprise primarily~~  
16 ~~maintained and operated for the selling, dispensing and consumption of alcoholic beverages on~~  
17 ~~the premises and may also include the sale and service of food. A bar or lounge may be physically~~  
18 ~~connected to another enterprise within the same building, which enterprise may be owned or~~  
19 ~~operated by the same person. There may be interior access between a bar or lounge and a~~  
20 ~~connected enterprise. However, there shall be a floor to ceiling opaque wall separation between~~  
21 ~~the two enterprises. A separation wall may be constructed to provide visual and physical access~~  
22 ~~for employees from areas in the building not open to the public. The bar or lounge shall have a~~  
23 ~~separate entrance and exit. A separate entrance and exit is not required if entrance to the bar may~~  
24 ~~only be obtained from the other distinct enterprise and the public may not enter the other~~  
25 ~~enterprise by first passing through the bar or lounge. All video lottery machines shall be~~

1 ~~adequately monitored during business hours. Adequate monitoring shall be accomplished by the~~  
2 ~~personal presence of an employee or by an employee using video cameras or mirrors and periodic~~  
3 ~~inspections of the bar or lounge. No new license may be issued to any establishment after July 1,~~  
4 ~~1992, unless such establishment complies with this section. No license may be renewed to any~~  
5 ~~establishment after July 1, 1993, unless such establishment complies with this section.~~

6 Section 3. That § 42-7A-44 be amended to read as follows:

7 42-7A-44. The placement of video lottery machines in licensed establishments shall be subject  
8 to the rules of the commission promulgated pursuant to chapter 1-26. No more than ten video  
9 lottery machines may be placed in any licensed establishment. ~~The bar or lounge with an on-sale~~  
10 ~~license issued pursuant to subdivision 35-4-2(12) or (16) shall be restricted to persons~~  
11 ~~twenty-one years of age or older.~~ The entrance to the area where video lottery machines are  
12 located shall display a sign that the premises are restricted to persons twenty-one years or older.  
13 Notwithstanding the restrictions in §§ 35-4-79 to 35-4-79.2, inclusive, ~~persons~~ a person under  
14 the age of twenty-one may only enter the premises where video lottery machines are located  
15 provided ~~they are~~ the person is accompanied by a parent, guardian, or spouse of twenty-one  
16 years or older.

17 Section 4. That § 42-7A-64 be repealed.

18 ~~42-7A-64. A municipality or county may consider, in addition to the criteria for the issuance~~  
19 ~~of an on-sale alcoholic beverage license, the following criteria for authorizing video lottery~~  
20 ~~machine placement in establishments issued an on-sale alcoholic beverage license pursuant to~~  
21 ~~subdivisions 35-4-2(12) and (16):~~

22 ~~(1) The number of establishments currently licensed for video lottery;~~

23 ~~(2) The proximity of the business to other establishments licensed for video lottery;~~

24 ~~(3) The type of business and manner in which the applicant proposes to operate it;~~

25 ~~(4) The location of the business in relation to other businesses, residential areas, or~~

1           ~~activities within the same general area;~~

2       ~~—(5)—The extent to which minors frequent a business connected to the one proposed; and~~

3       ~~—(6)—The effect the proposed business has on economic development.~~

4       ~~—The governing board shall certify on each application filed with the department of revenue~~  
5       ~~for a license granted under subdivisions 35-4-2(12) and (16) whether the business premises is~~  
6       ~~authorized for video lottery machine placement. An existing video lottery license may not be~~  
7       ~~denied renewal or transfer based upon the criteria set forth in this section. The lottery may issue~~  
8       ~~a video lottery license to those establishments certified pursuant to this section. Notwithstanding~~  
9       ~~the above provisions, a county or municipality may not restrict the number of alcoholic beverage~~  
10      ~~licenses issued under subdivisions 35-4-2(12) and (16) and certified for video lottery to a number~~  
11      ~~less than those licensed as video lottery establishments on March 1, 1994.~~

12       Section 5. That § 35-4-103 be amended to read as follows:

13       35-4-103. Any municipality or county may impose on any person who is licensed pursuant  
14      to subdivision 35-4-2(4), (6), (11), ~~(12), (13) or (16)~~ or (13) and who is issued a video lottery  
15      establishment license pursuant to § 42-7A-41 an annual additional license fee for the privilege  
16      of locating video lottery machines on the licensed premises. The fee may not exceed fifty dollars  
17      for each video lottery machine. The fees imposed by this section are in addition to fees imposed  
18      under §§ 35-4-2 and 42-7A-41 and shall be paid at the same time and in the same manner as the  
19      fees paid in § 35-4-2. All fees received under this section shall be deposited into the general fund  
20      of the municipality or county having jurisdiction over the licensee. However, the municipality or  
21      county may not impose this additional fee on more than one license per location.

22       Section 6. That § 10-45-2 be amended to read as follows:

23       10-45-2. There is hereby imposed a tax upon the privilege of engaging in business as a  
24      retailer, a tax of four and one-half percent upon the gross receipts of all sales of tangible personal  
25      property consisting of goods, wares, or merchandise, except as taxed by § 10-45-3 and except

1 as otherwise provided in this chapter, sold at retail in the State of South Dakota to consumers  
2 or users.

3 Section 7. That § 10-45-3 be amended to read as follows:

4 10-45-3. There is hereby imposed a tax of three and one-half percent on the gross receipts  
5 from the sale or resale of farm machinery and attachment units other than replacement parts; or  
6 irrigation equipment used exclusively for agricultural purposes by licensed South Dakota  
7 retailers; provided, however, that whenever any trade-in or exchange of used farm machinery is  
8 involved in the transaction, the tax shall only be due and collected on the cash difference.

9 Section 8. That § 10-45-5 be amended to read as follows:

10 10-45-5. There is imposed a tax at the rate of three and one-half percent upon the gross  
11 receipts of any person from engaging in the business of leasing farm machinery or irrigation  
12 equipment used for agricultural purposes and four and one-half percent upon the gross receipts  
13 of any person from engaging or continuing in any of the following businesses or services in this  
14 state: abstracters; accountants; architects; barbers; beauty shops; bill collection services;  
15 blacksmith shops; car washing; dry cleaning; dyeing; exterminators; garage and service stations;  
16 garment alteration; cleaning and pressing; janitorial services and supplies; specialty cleaners;  
17 laundry; linen and towel supply; membership or entrance fees for the use of a facility or for the  
18 right to purchase tangible personal property or services; photography; photo developing and  
19 enlarging; tire recapping; welding and all repair services; cable television; and rentals of tangible  
20 personal property except leases of tangible personal property between one telephone company  
21 and another telephone company, motor vehicles as defined by § 32-5-1 leased under a single  
22 contract for more than twenty-eight days and mobile homes provided, however, that the specific  
23 enumeration of businesses and professions made in this section does not, in any way, limit the  
24 scope and effect of § 10-45-4.

25 Section 9. That § 10-45-5.3 be amended to read as follows:

1        10-45-5.3. There is imposed, at the rate of three and one-half percent, an excise tax on the  
2        gross receipts of any person engaging in oil and gas field services (group no. 138) as enumerated  
3        in the Standard Industrial Classification Manual, 1987, as prepared by the Statistical Policy  
4        Division of the Office of Management and Budget, Office of the President.

5        Section 10. That § 10-45-6 be amended to read as follows:

6        10-45-6. There is hereby imposed a tax of four and one-half percent upon the gross receipts  
7        from sales, furnishing, or service of gas, electricity, and water, including the gross receipts from  
8        such sales by any municipal corporation furnishing gas, and electricity, to the public in its  
9        proprietary capacity, except as otherwise provided in this chapter, when sold at retail in the State  
10       of South Dakota to consumers or users.

11       Section 11. That § 10-45-6.1 be amended to read as follows:

12       10-45-6.1. There is hereby imposed on amounts paid for local telephone services, toll  
13       telephone services, and teletypewriter services, a tax of four and one-half percent of the amount  
14       so paid. The taxes imposed by this section shall be paid by the person paying for the services. If  
15       a bill is rendered the taxpayer for local telephone service or toll telephone service, the amount  
16       on which the tax with respect to such services shall be based shall be the sum of all charges for  
17       such services included in the bill; except that if a person who renders the bill groups individual  
18       items for purposes of rendering the bill and computing the tax, then the amount on which the tax  
19       for each such group shall be based shall be the sum of all items within that group, and the tax on  
20       the remaining items not included in any such group shall be based on the charge for each item  
21       separately. If the tax imposed by this section with respect to toll telephone service is paid by  
22       inserting coins in coin operated telephones, the tax shall be computed to the nearest multiple of  
23       five cents, except that, where the tax is midway between multiples of five cents, the next higher  
24       multiple shall apply. The tax so paid shall be remitted at the same time as the sales tax imposed  
25       by this chapter.

1       Section 12. That § 10-45-8 be amended to read as follows:

2       10-45-8. There is imposed a tax of four and one-half percent upon the gross receipts from  
3       all sales of tickets or admissions to places of amusement and athletic events, except as otherwise  
4       provided in this chapter.

5       Section 13. That § 10-45-70 be amended to read as follows:

6       10-45-70. There is imposed a tax of four and one-half percent on the gross receipts from the  
7       transportation of tangible personal property. The tax imposed by this section shall apply to any  
8       transportation of tangible personal property if both the origin and destination of the tangible  
9       personal property are within this state.

10      Section 14. That § 10-45-71 be amended to read as follows:

11      10-45-71. There is imposed a tax of four and one-half percent on the gross receipts from the  
12      transportation of passengers. The tax imposed by this section shall apply to any transportation  
13      of passengers if the passenger boards and exits the mode of transportation within this state.

14      Section 15. That § 10-46-2.1 be amended to read as follows:

15      10-46-2.1. For the privilege of using services in South Dakota, except those types of services  
16      exempted by § 10-46-17.3, there is imposed on the person using the service an excise tax equal  
17      to four and one-half percent of the value of the services at the time they are rendered. However,  
18      this tax may not be imposed on any service rendered by a related corporation as defined in  
19      subdivision 10-43-1(11) for use by a financial institution as defined in subdivision 10-43-1(4) or  
20      on any service rendered by a financial institution as defined in subdivision 10-43-1(4) for use by  
21      a related corporation as defined in subdivision 10-43-1(11). For the purposes of this section, the  
22      term, related corporation, includes a corporation which together with the financial institution is  
23      part of a controlled group of corporations as defined in 26 U.S.C. § 1563 as in effect on  
24      January 1, 1989, except that the eighty percent ownership requirements set forth in 26 U.S.C.  
25      § 1563(a)(2)(A) for a brother-sister controlled group are reduced to fifty-one percent. For the



1 purpose of this chapter, services rendered by an employee for the use of his employer are not  
2 taxable.

3 Section 16. That § 10-46-2.2 be amended to read as follows:

4 10-46-2.2. An excise tax is imposed upon the privilege of the use of rented tangible personal  
5 property in this state at the rate of four and one-half percent of the rental payments upon the  
6 property.

7 Section 17. That § 10-46-57 be amended to read as follows:

8 10-46-57. There is imposed a tax of four and one-half percent on the privilege of the use of  
9 any transportation of tangible personal property. The tax imposed by this section shall apply to  
10 any transportation of tangible personal property if both the origin and destination of the tangible  
11 personal property are within this state.

12 Section 18. That § 10-46-58 be amended to read as follows:

13 10-46-58. There is imposed a tax of four and one-half percent on the privilege of the use of  
14 any transportation of passengers. The tax imposed by this section shall apply to any  
15 transportation of passengers if the passenger boards and exits the mode of transportation within  
16 this state.

17 Section 19. The effective date of this Act is July 1, 2001.

1    **BILL HISTORY**

2    1/22/99 First read in House and referred to State Affairs. H.J. 126

3    2/8/99 Scheduled for Committee hearing on this date.

4    2/10/99 State Affairs Do Pass Amended, Passed, AYES 7, NAYS 5. H.J. 458